

(d) We will post all decisions made under this section on AVS.

(e) Any person who receives a written decision under this section, and who wishes to appeal that decision, must exhaust administrative remedies under the procedures at 43 CFR 4.1380 through 4.1387 or, when a State is the regulatory authority, the State regulatory program counterparts, before seeking judicial review.

(f) Following our written decision or any decision by a reviewing administrative or judicial tribunal, we must review the information in AVS to determine if it is consistent with the decision. If it is not, we must promptly revise the information in AVS to reflect the decision.

[65 FR 79666, Dec. 19, 2000, as amended at 72 FR 68030, Dec. 3, 2007]

PART 774—REVISION; RENEWAL; TRANSFER, ASSIGNMENT, OR SALE OF PERMIT RIGHTS; POST-PERMIT ISSUANCE REQUIREMENTS; AND OTHER ACTIONS BASED ON OWNERSHIP, CONTROL, AND VIOLATION INFORMATION

Sec.

774.1 Scope and purpose.

774.9 Information collection.

774.10 Regulatory authority review of permits.

774.11 Post-permit issuance requirements for regulatory authorities and other actions based on ownership, control, and violation information.

774.12 Post-permit issuance information requirements for permittees.

774.13 Permit revisions.

774.15 Permit renewals.

774.17 Transfer, assignment, or sale of permit rights.

AUTHORITY: 30 U.S.C. 1201 *et seq.*

SOURCE: 48 FR 44395, Sept. 28, 1983, unless otherwise noted.

§ 774.1 Scope and purpose.

This part provides requirements for revision; renewal; transfer, assignment, or sale of permit rights; entering and updating information in AVS following the issuance of a permit; post-permit issuance requirements for regulatory authorities and permittees; and other

actions based on ownership, control, and violation information.

[65 FR 79667, Dec. 19, 2000]

§ 774.9 Information collection.

(a) The collections of information contained in part 774 have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1029–0116. Regulatory authorities will use this information to:

(1) Determine if the applicant meets the requirements for revision; renewal; transfer, assignment, or sale of permit rights;

(2) Enter and update information in AVS following the issuance of a permit; and

(3) Fulfill post-permit issuance requirements and other obligations based on ownership, control, and violation information.

(b) A Federal agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. Response is required to obtain a benefit in accordance with SMCRA. Send comments regarding burden estimates or any other aspect of this collection of information, including suggestions for reducing the burden, to the Office of Surface Mining Reclamation and Enforcement, Information Collection Clearance Officer, Room 202–SIB, 1951 Constitution Avenue, NW., Washington, DC 20240.

[72 FR 68030, Dec. 3, 2007]

§ 774.10 Regulatory authority review of permits.

(a) The regulatory authority shall review each permit issued and outstanding under an approved regulatory program during the term of the permit. This review shall occur not later than the middle of each permit term and as follows:

(1) Permits with a term longer than 5 years shall be reviewed no less frequently than the permit midterm or every 5 years, whichever is more frequent.

(2) Permits with variances granted in accordance with § 785.14 of this chapter (mountaintop removal) and § 785.18 of

Surface Mining Reclamation and Enforcement, Interior

§ 774.11

this chapter (variance for delay in contemporaneous reclamation requirement in combined surface and underground mining operations) of this chapter shall be reviewed no later than 3 years from the date of issuance of the permit unless, for variances issued in accordance with § 785.14 of this chapter, the permittee affirmatively demonstrates that the proposed development is proceeding in accordance with the terms of the permit.

(3) Permits containing experimental practices issued in accordance with § 785.13 of this chapter and permits with a variance from approximate original contour requirements in accordance with § 785.16 shall be reviewed as set forth in the permit or at least every 2½ years from the date of issuance as required by the regulatory authority, in accordance with §§ 785.13(g) and 785.16(c) of this chapter, respectively.

(b) After the review required by paragraph (a) of this section, or at any time, the regulatory authority may, by order, require reasonable revision of a

permit in accordance with § 774.13 to ensure compliance with the Act and the regulatory program.

(c) Any order of the regulatory authority requiring revision of a permit shall be based upon written findings and shall be subject to the provisions for administrative and judicial review in part 775 of this chapter. Copies of the order shall be sent to the permittee.

(d) Permits may be suspended or revoked in accordance with subchapter L of this chapter.

[48 FR 44398, Sept. 28, 1983. Redesignated at 65 FR 79667, Dec. 19, 2000.]

§ 774.11 Post-permit issuance requirements for regulatory authorities and other actions based on ownership, control, and violation information.

(a) For the purposes of future permit eligibility determinations and enforcement actions, we, the regulatory authority, must enter into AVS the data shown in the following table—

| We must enter into AVS all . . . | Within 30 days after . . . |
|---|--|
| (1) permit records | the permit is issued or subsequent changes made. |
| (2) unabated or uncorrected violations | the abatement or correction period for a violation expires. |
| (3) changes to information initially required to be provided by an applicant under 30 CFR 778.11. | receiving notice of a change. |
| (4) changes in violation status | abatement, correction, or termination of a violation, or a decision from an administrative or judicial tribunal. |

(b) If, at any time, we discover that any person owns or controls an operation with an unabated or uncorrected violation, we will determine whether enforcement action is appropriate under part 843, 846 or 847 of this chapter. We must enter the results of each enforcement action, including administrative and judicial decisions, into AVS.

(c) We must serve a preliminary finding of permanent permit ineligibility under section 510(c) of the Act on you, an applicant or operator, if the criteria in paragraphs (c)(1) and (c)(2) are met. In making a finding under this paragraph, we will only consider control relationships and violations which would make, or would have made, you ineligible for a permit under §§ 773.12(a) and (b) of this subchapter. We must make a

preliminary finding of permanent permit ineligibility if we find that—

(1) You control or have controlled surface coal mining and reclamation operations with a demonstrated pattern of willful violations under section 510(c) of the Act; and

(2) The violations are of such nature and duration with such resulting irreparable damage to the environment as to indicate your intent not to comply with the Act, its implementing regulations, the regulatory program, or your permit.

(d) You may request a hearing on a preliminary finding of permanent permit ineligibility under 43 CFR 4.1350 through 4.1356.

(e) Entry into AVS.

(1) If you do not request a hearing, and the time for seeking a hearing has